

AMENDED IN SENATE MAY 26, 1998

**SENATE BILL**

**No. 2056**

**Introduced by Senator Brulte**

February 20, 1998

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An act to amend Section ~~121132~~ *121135* of the Health and Safety Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

SB 2056, as amended, Brulte. Health: HIV exposure: first responders.

Existing law provides that the blood or other potentially infectious material of a person receiving health care services that has been the source of a significant exposure to an individual may be tested and the exposed individual may be informed of the HIV status of that patient if certain conditions are met. Existing law provides that if this source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any "available blood or patient sample," as defined, of the source patient may be tested.

This bill would ~~change the definition of "available blood or patient sample" for purposes of these and related provisions to refer to blood or other material that was legally obtained from the source patient prior to the release of the patient from the health care facility~~ *provide that if the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient legally obtained*

*in the course of providing health care services at the time of the exposure event shall be deemed granted.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. — Section 121132 of the Health and Safety~~

*SECTION 1. Section 121135 of the Health and Safety Code is amended to read:*

121135. Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed of the HIV status of the patient, if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever an individual becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health-care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure as defined in subdivision (h) of Section 121132. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of an HIV test, the need for followup testing, and the

1 procedures that the exposed individual must follow  
2 regardless of the HIV status of the source patient. The  
3 exposed individual may be tested in accordance with the  
4 then applicable guidelines or standards of the Division of  
5 Occupational Safety and Health. The result of this test  
6 shall be confirmed as negative before available blood or  
7 other patient samples of the source patient may be tested  
8 for evidence of HIV infection without the consent of the  
9 source patient pursuant to subdivision (d).

10 (2) Within 72 hours of certifying the exposure as  
11 significant, the certifying physician shall provide written  
12 certification to an attending physician of the source  
13 patient that a significant exposure to an exposed  
14 individual has occurred, and shall request information on  
15 the HIV status of the source patient and the availability  
16 of blood or other patient sample. An attending physician  
17 shall respond to the request for information within three  
18 working days.

19 (c) If the HIV status of the source patient is already  
20 known to be positive, then, except as provided in  
21 subdivisions (b) and (c) of Section 121010 when the  
22 exposed individual is a health care provider or an  
23 employee or agent of the health care provider of the  
24 source patient, an attending physician and surgeon of the  
25 source patient shall attempt to obtain the consent of the  
26 source patient to disclose to the exposed individual the  
27 HIV status of the source patient. If the source patient  
28 cannot be contacted or refuses to consent to the  
29 disclosure, then the exposed individual may be informed  
30 of the HIV status of the source patient by an attending  
31 physician of the source patient as soon as possible after the  
32 exposure has been certified as significant,  
33 notwithstanding Section 120980 or any other provision of  
34 law.

35 (d) If the HIV status of the source patient is unknown  
36 to the certifying physician or an attending physician, if  
37 blood or other patient samples are available, and if the  
38 exposed individual has tested negative on a baseline HIV  
39 test, the source patient shall be given the opportunity to

1 give informed consent to an HIV test in accordance with  
2 the following:

3 (1) Within 72 hours after receiving a written  
4 certification of significant exposure, an attending  
5 physician of the source patient shall do all of the following:

6 (A) Make a good faith effort to notify the source  
7 patient or the authorized legal representative of the  
8 source patient about the significant exposure. A good  
9 faith effort to notify includes, but is not limited to, a  
10 documented attempt to locate the source patient by  
11 telephone or by first-class mail with certificate of mailing.  
12 An attempt to locate the source patient and the results of  
13 that attempt shall be documented in the medical record  
14 of the source patient. An inability to contact the source  
15 patient, or legal representative of the source patient,  
16 after a good faith effort to do so as provided in this  
17 subdivision, shall constitute a refusal of consent pursuant  
18 to paragraph (2).

19 (B) Attempt to obtain the voluntary informed consent  
20 of the source patient or the authorized legal  
21 representative of the source patient to perform an HIV  
22 test on the source patient or on any available blood or  
23 patient sample of the source patient. The voluntary  
24 informed consent shall be in writing. The source patient  
25 shall have the option not to be informed of the test result.  
26 An exposed individual shall be prohibited from  
27 attempting to obtain directly informed consent for HIV  
28 testing from the source patient. If a source patient is  
29 incapacitated and therefore is unable to provide  
30 informed consent and has no authorized legal  
31 representative, then HIV testing on the source patient or  
32 available blood or tissue of the source patient shall not be  
33 permitted.

34 (C) Provide the source patient with medically  
35 appropriate pretest counseling and refer the source  
36 patient to appropriate posttest counseling and followup  
37 if necessary. The source patient shall be offered medically  
38 appropriate counseling whether or not he or she consents  
39 to testing.



(2) If the source patient or the authorized legal representative of the source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the HIV test results.

*(3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.*

(4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the HIV test only if he or she wishes to be so informed. If a patient refuses to provide informed consent to HIV testing and refuses to learn the results of HIV testing, then he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the HIV test results. HIV test results shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

~~(4)~~

(5) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, then the HIV test results of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

~~(5)~~

(6) The source patient's identity shall be encoded on the HIV test result record.

1 (e) If an exposed individual is informed of the HIV  
2 status of a source patient pursuant to this section, the  
3 exposed individual shall be informed that he or she is  
4 subject to existing confidentiality protections for any  
5 identifying information about the HIV test results, and  
6 that HIV-related medical information of the source  
7 patient shall be kept confidential and may not be further  
8 disclosed, except as otherwise authorized by law. The  
9 exposed individual shall be informed of the penalties for  
10 which he or she would be personally liable for violation  
11 of Section 120980.

12 (f) The costs for the HIV test and counseling of the  
13 exposed individual, or the source patient, or both shall be  
14 borne by the employer of the exposed individual, if any.  
15 An employer who directs and controls the exposed  
16 individual shall provide the postexposure evaluation and  
17 followup required by the California Division of  
18 Occupational Safety and Health as well as the testing and  
19 counseling for source patients required under this  
20 chapter. If an exposed individual is a volunteer or a  
21 student, then the health care provider or first responder  
22 that assigned a task to the volunteer or student may pay  
23 for the costs of testing and counseling as if that volunteer  
24 or student were an employee. If an exposed individual,  
25 who is not an employee of a health facility or of another  
26 health care provider, chooses to obtain postexposure  
27 evaluation or followup counseling, or both, or treatment,  
28 then he or she shall be financially responsible for the costs  
29 thereof and shall be responsible for the costs of the testing  
30 and counseling for the source patient.

31 (g) Nothing in this section authorizes the disclosure of  
32 the source patient's identity.

33 (h) Nothing in this section shall authorize a health care  
34 provider to draw blood or other body fluids except as  
35 otherwise authorized by law.

36 (i) The provisions of this section are cumulative only  
37 and shall not preclude HIV testing of source patients as  
38 authorized by any other provision of law.

39 ~~Code is amended to read:~~

1 ~~121132. (a) “Attending physician of the source~~  
2 ~~patient” means any physician and surgeon licensed~~  
3 ~~pursuant to Chapter 5 (commencing with Section 2000)~~  
4 ~~of Division 2 of the Business and Professions Code and any~~  
5 ~~person licensed pursuant to the Osteopathic Initiative~~  
6 ~~Act, who provides health care services to the source~~  
7 ~~patient. Notwithstanding any other provision of this~~  
8 ~~subdivision to the contrary, the attending physician of the~~  
9 ~~source patient shall include any of the following persons:~~

10 ~~(1) The private physician of the source patient.~~

11 ~~(2) The physician primarily responsible for the patient~~  
12 ~~who is undergoing inpatient treatment in a hospital.~~

13 ~~(3) A registered nurse or licensed nurse practitioner~~  
14 ~~who has been designated by the attending physician of~~  
15 ~~the source patient.~~

16 ~~(b) “Available blood or patient sample” means blood~~  
17 ~~or other tissue or material that was legally obtained in the~~  
18 ~~course of providing health care services, and is in the~~  
19 ~~possession of the physician or other health care provider~~  
20 ~~of the source patient prior to the release of the source~~  
21 ~~patient from the physician’s or health care provider’s~~  
22 ~~facility.~~

23 ~~(c) “Certifying physician” means any physician~~  
24 ~~consulted by the exposed individual for the exposure~~  
25 ~~incident. A certifying physician shall have demonstrated~~  
26 ~~competency and understanding of the then applicable~~  
27 ~~guidelines or standards of the Division of Occupational~~  
28 ~~Safety and Health.~~

29 ~~(d) “Exposed individual” means any individual health~~  
30 ~~care provider, first responder, or any other person,~~  
31 ~~including, but not limited to, any employee, volunteer, or~~  
32 ~~contracted agent of any health care provider, who is~~  
33 ~~exposed, within the scope of his or her employment, to~~  
34 ~~the blood or other potentially infectious materials of a~~  
35 ~~source patient.~~

36 ~~(e) “Health care provider” means any person licensed~~  
37 ~~or certified pursuant to Division 2 (commencing with~~  
38 ~~Section 500) of the Business and Professions Code, any~~  
39 ~~person licensed pursuant to the Osteopathic Initiative~~  
40 ~~Act or the Chiropractic Initiative Act, any person~~

1 ~~certified pursuant to Division 2.5 (commencing with~~  
2 ~~Section 1797), any clinic, health dispensary, or health~~  
3 ~~facility licensed or exempt from licensure pursuant to~~  
4 ~~Division 2 (commencing with Section 1200), any~~  
5 ~~employee, volunteer, or contracted agent of any group~~  
6 ~~practice prepayment health care service plan regulated~~  
7 ~~pursuant to the Knox-Keene Health Care Service Plan~~  
8 ~~Act of 1975 (Chapter 2.2 (commencing with Section~~  
9 ~~1340) of Division 2), and any professional student of one~~  
10 ~~of the clinics, health dispensaries, or health care facilities~~  
11 ~~or health care providers described in this subdivision.~~

12 ~~(f) “First responder” means police, firefighters,~~  
13 ~~reseue personnel, and any other person who provides~~  
14 ~~emergency response, first aid care, or other medically~~  
15 ~~related assistance either in the course of the person’s~~  
16 ~~occupational duties or as a volunteer.~~

17 ~~(g) “Other potentially infectious materials” means~~  
18 ~~those body fluids identified by the Division of~~  
19 ~~Occupational Safety and Health as potentially capable of~~  
20 ~~transmitting HIV.~~

21 ~~(h) “Significant exposure” means direct contact with~~  
22 ~~blood or other potentially infectious materials of a patient~~  
23 ~~in a manner that, according to the then applicable~~  
24 ~~guidelines of the Division of Occupational Safety and~~  
25 ~~Health, is capable of transmitting HIV.~~

26 ~~(i) “Source patient” means any person receiving~~  
27 ~~health care services whose blood or other potentially~~  
28 ~~infectious material has been the source of a significant~~  
29 ~~exposure to an exposed individual.~~